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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/760,512	01/20/2004	Stephan Hütte	100717-605 / Bayer 10266-	1491
27386	7590	08/14/2006	EXAMINER	
NORRIS, MC LAUGHLIN & MARCUS, P.A. 875 THIRD AVE 18TH FLOOR NEW YORK, NY 10022			POULOS, SANDRA K	
			ART UNIT	PAPER NUMBER
			1714	

DATE MAILED: 08/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/760,512	HUTTE ET AL.	
	Examiner Sandra K. Poulos	Art Unit 1714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 20 January 2004.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-24 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-24 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____ .  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/20/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 1, 7, 10, 11, 14, 17, 22 are objected to because of the following informalities:
  - a. Claim 1 uses the variable "n" in formula (1) but does not explicitly define "n".
  - b. Claims 7, 10, 14 should be "according to \_claim 1 or 2" rather than "to claim".
  - c. Claim 11 should be "the\_group" rather than "thegroup".
  - d. Claim 17 should be "fibers\_of" instead of "fibersof" in line 1.
  - e. Claim 22 should start with was capital letter and there is a comma rather than period after in "wt,%".

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.  
(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-24 are rejected under 35 U.S.C. 102(n) as being anticipated by Hutte et al (US 5,969,008).

Hutte discloses polyurethane fibers that are resistant to chlorine and contain hydrotalcites coated with siloxanes (abstract). Elastic polyurethane fibers consisting of at least 85% segmented polyurethane are used in hosiery and sportswear (col 1, lines 22-28; col 7, lines 38-41). The hydrotalcite is given in formulas 1-7 (col 3-4) and is present in an amount of

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0.05-15 wt% (col 3, lines 51-59) and is generally smaller than 2  $\mu\text{m}$  (col 6, lines 41-45). The polyurethane fibers are produced by dry or wet spinning (col 7, lines 17-18). The solvent is dimethylacetamide, dimethylformamide, or dimethylsulphoxide in a proportion of 20-45 wt% (col 7, lines 42-45). The fibers can be combined with synthetic hard fibers or natural fibers in order to produce knitwear (col 8, lines 62-67). Magnesium stearate is mixed in the spinning solution and results in a total amount of 0.20 wt% (col 10, lines 32-37). Therefore it is examiner's position that the magnesium stearate would also coat the hydrotalcite in addition to the siloxane since they are all mixed in a solution together. In the example, the solution is dry spun through spinning nozzles in a typical spinning apparatus so as to form filaments (col 10, lines 38-40).

Therefore, Hutte anticipates the cited claims.

3. Claims 1-16, 23-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Song et al (US 2003/0203199) in view of the evidence set forth in Hawley's Condensed Chemical Dictionary.

Song discloses spandex fiber resistant to both heat and chlorine, which contains hydrotalcite coated with a melamine-based compound (abstract). Hawleys discloses that spandex inherently is composed of at least 85% of segmented polyurethane. The formula for the hydrotalcite is given in formulas 1-6 (para 11-13, 31-33). The content of the hydrotalcite is 0.1-10 wt% (para 15). The average diameter is 0.1-10  $\mu\text{m}$  and the melamine coating is present in an amount of 0.1-10 wt% (para 16, 18, 35). Magnesium stearate is used to enhance the unwinding capability of the spandex fiber and added in an amount of 0.1 to 2 wt% (para 39). The magnesium stearate is present in an amount of 0.5 wt% and is mixed in a solution with the hydrotalcite in examples 1-8 (para 41-42). Therefore it is examiner's position that the magnesium stearate would also coat the hydrotalcite in addition to the melamine based

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compound since they are all mixed in a solution together. The solvent is dimethylacetamide (para 41) and the solution is subjected to dry spinning to prepare the filaments (para 43). The spandex fiber is made into tubular knitted fabrics (para 51, 56). The spandex fibers are not explicitly mixed with synthetic or natural fibers and thus meet the claimed recitation of optionally included.

Therefore, Song anticipates the cited claims.

### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- US 2003/0088049 discloses spandex compositions with hydrotalcite.
- US 5,969,028 is similar to US 5,969,008 above.
- US 5,447,969 is the US equivalent of JP 59-133248.
- Machine translation for JP 09-217227.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sandra K. Poulos whose telephone number is (571) 272-6428. The examiner can normally be reached on M-F 8:00-4:30 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

*Vasu Jagannathan*  
VASU JAGANNATHAN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*SKP*

Sandra K. Poulos